



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	08/18/05	Bill No:	SB 323
Tax:	Sales and Use	Author:	Migden
Related Bills:			

BILL SUMMARY

This bill would impose a 50% penalty upon a person who knowingly collected sales tax reimbursement and failed to timely remit that tax to the Board, except as specified.

Summary of Amendments

The amendments since the previous analysis make clarifying changes to the relief for reasonable cause provisions.

ANALYSIS

Current Law

Under California's Sales and Use Tax Law, sales tax is imposed on all retailers for the privilege of selling tangible personal property in this state. Under Section 1656.1 of the Civil Code, whether a retailer may add sales tax reimbursement to the sales price of the tangible personal property sold at retail to a purchaser depends solely upon the terms of the agreement of sale. The law presumes that the parties agreed to the addition of sales tax reimbursement to the sales price of tangible personal property sold at retail to a purchaser if:

- (1) The agreement of sale expressly provides for such addition of sales tax reimbursement;
- (2) Sales tax reimbursement is shown on the sales check or other proof of sale; or
- (3) The retailer posts in his or her premises in a location visible to purchasers, or includes on a price tag or in an advertisement or other printed material directed to purchasers, a notice to the effect that reimbursement for sales tax will be added to the sales price of all items or certain items, whichever is applicable.

The Sales and Use Tax Law provides for a variety of penalties. However, the law does not provide for a specific penalty attributable to situations in which a taxpayer knowingly collects sales tax reimbursement and fails to remit the tax.

Under the law, there are penalties that are mandatory and imposed automatically, such as those imposed because payments are made late or returns are filed after the due date, and there are others that are discretionary and that may be assessed by auditors in the conduct of their audits. The main penalties that are imposed are summarized as follows:

Nature of Penalty	Rate	Section
Failure to file a return	10%	6511
Negligence or intentional disregard of the laws or regulations	10%	6484
Fraud or intent to evade the law or regulations	25%	6485
Knowingly not obtaining a valid permit in order to avoid the tax	50%	7155
Improper use of a resale certificate for personal gain or to evade the tax	*	6072; 6094.5
Registration of vehicle, vessel, or aircraft out of state to evade the tax	50%	6485.1; 6514.1
Failure to obtain evidence that operator of catering truck holds valid seller's permit	\$500	6074
Failure of retail florist to obtain permit	\$500 **	6077

* 10% of the tax due or \$500 whichever is greater

**Plus any other applicable penalty

Proposed Law

This bill would amend Section 7155 of the Sales and Use Tax Law to provide that any person who knowingly collects sales tax reimbursement, as defined, and who fails to timely remit that sales tax reimbursement to the Board, shall be liable for a penalty of 50% of the amount not timely remitted.

The bill would exclude from the proposed penalty any person whose measure of liability for the unremitted tax averages \$1,000 or less per month, or does not exceed 5% of the total measure of tax for which the tax reimbursement was collected for the period in which the tax was due, whichever is greater.

The bill further provides relief from the proposed penalty if the Board finds that the person's failure to timely remit the tax was due to reasonable cause or circumstances beyond the person's control.

The bill would become operative January 1, 2006.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author. According to the author's office, the purpose of the bill is to enhance the penalty in cases where a retailer collects sales tax reimbursement from customers and fails to timely remit the tax to the state.
2. **The August 18, 2005 and July 1, 2005 amendments** make nonsubstantive, clarifying changes. **The June 22, 2005 amendments** delete the former provisions that would have provided a rebuttable presumption of fraud for a person's failure to timely remit sales tax reimbursement knowingly collected, and instead, provide for a 50% penalty for such acts. These amendments also would 1) exclude persons whose unremitted amounts fell under the proposed thresholds from the proposed penalty and 2) provide relief of the proposed penalty for reasonable cause.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position

3. **Customers entrust retailers to remit the tax to the State.** Proponents note that sales taxes are generally regarded by customers as “fiduciary taxes” or “trust taxes.” The customers perceive the tax reimbursement they pay to retailers as the State’s money, not the retailers’. While the true liability for the tax falls on a retailer, customers who pay sales tax to the retailer trust and expect the retailer to send it to the state; otherwise they would have no obligation to reimburse the retailer. When sales tax reimbursement is collected from a customer, the customers’ perception is that the business is, in effect, acting as the agent for the state or local government, collecting the government’s money from the customer and then paying it over to the government on a periodic basis. A failure of the business to do so should be subjected to enhanced penalties.

COST ESTIMATE

Enactment of this bill could increase the Board’s workload attributable to an increase in billings for the new penalty and processing requests for relief. However, the increase in workload would likely be offset by the increase in compliance and the increase in revenues attributable to the 50 percent penalty.

REVENUE ESTIMATE

Enactment of this bill could increase compliance with the Sales and Use Tax Law, thereby increasing revenues. However, the magnitude of this increase is unknown.

Analysis prepared by:	Sheila T. Sarem	916-445-6579	08/25/05
-----------------------	-----------------	--------------	----------

Contact:	Margaret S. Shedd	916-322-2376
----------	-------------------	--------------

mcc

323-3ss.doc